



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 05570-99
18 October 1999

SSGT [REDACTED] USMC
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 27 August 1999, a copy of which is attached. They also considered your letter dated 29 September 1999 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board was unable to find you had a personality conflict with the reporting senior. The reporting senior's statement dated 26 September 1999 did not persuade the Board that the contested fitness report should be removed. They noted he said the report was "an honest assessment"; that he had "minimal" time to observe you; that you improved during your additional time under him; and that he concurs with your request to remove the report at issue if it has delayed your career advancement. Nothing in this statement convinced the Board that the contested report unfairly or inaccurately evaluated you. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
AUG 27 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED], USMC

Ref: (a) SSgt. [REDACTED]'s DD Form 149 of 29 Jun 99
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 24 August 1999 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 960910 to 970122 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is fraught with inconsistencies and substantive inaccuracies. He also believes the Section B marks neither support nor correlate with the verbiage in Section C or the Reviewing Officer's comments. To support his appeal, the petitioner furnishes his own detailed statement, copies of the challenged and subsequent fitness reports, and an advocacy letter from Gunnery Sergeant [REDACTED] (24th MEU Intelligence Chief).

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Contrary to the petitioner's arguments and assertions, the Board discerns absolutely no internal inconsistency relative to the fitness report under consideration. Nor do they find that any of the comments are contradictory with one another. By all accounts, the evaluation depicts completely acceptable performance of duty/mission accomplishment with no adverse implications.

b. While the petitioner takes exception and disagrees with many of the assigned Section B ratings, the Board is hasty to point out that the fitness report reflects the opinion and judgmental evaluation of First Lieutenant [REDACTED] (i.e., the individual tasked with the responsibility of officially evaluating and recording the petitioner's performance). We also invite attention to subparagraph 4004.2 of reference (b) concerning the assignment of an observed mark in Item 13b

(3) PERB

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SERGEANT [REDACTED] USMC

(additional duties). An observed mark is to occur only when additional duties require the Marine to devote prolonged periods of time to such assignments. It was evidently First Lieutenant [REDACTED]'s determination that the petitioner's "collateral" duties did not require "prolonged" periods of time and appropriately assigned a mark of "not observed" in Item 13b.

c. The petitioner's allegation that the report is administratively inaccurate in that the comments in Section C indicate the report is an "extended report" is considered without merit. Item 12 in Section B was not marked "extended", and the incorporation of such a comment by the Reporting Senior is viewed as nothing more than a misinterpretation on his part. Since it was known that the petitioner had another reporting occasion occurring within 60 days of the ending date of the annual occasion, the Reporting Senior correctly omitted the annual report and included the period in the report at issue. This action was all within the guidance contained in reference (b). The Reporting Senior's misstatement in Section C is minute and has no bearing on the substantive accuracy of the evaluation. Likewise, it does not constitute grounds for removing the report.

d. While reference (b) asks for a statement in Section C when Item 5a reflects an entry of "PART" (i.e., completed a partial physical fitness test (PFT)), its absence is not viewed as so significant as to invalidate the report.

e. The advocacy statement from Gunnery Sergeant [REDACTED] although supportive and complimentary, does not cause the Board to question the overall evaluation rendered by First Lieutenant [REDACTED] and concurred in (with amplifying comments) by Lieutenant Colonel [REDACTED].

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED]'s official military record.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps